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EXAMINER	
NGUYEN, TRI V	

ART UNIT	PAPER NUMBER
1751	

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Please find below and/or attached an Office communication concerning this application or proceeding.

W

Office Action Summary	Application No.	Applicant(s)	
	09/857,257	ELDERING, CHARLES	
	Examiner	Art Unit	
	Tri V. Nguyen	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 February 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35,37,38,40-43,45 and 46* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35,37,38,40-43,45 and 46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2/27, 8/11/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: *ids 7/26/04 7/17/01*.

DETAILED ACTION

Response to Amendment

1. In the amendment file on February 27th, 2006, Claims 1, 5, 10 and 17 have been amended and Claims 36, 39 and 44 have been cancelled. The currently pending claims considered below are Claims 1-35, 37, 38, 40-43 and 45-46.

Terminal Disclaimer

2. The terminal disclaimer filed on February 27th 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent No. 6,324,519 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 5, 9-11, 14, 17-19, 23, 25, 27-30, 32-34, 41-43 and 46 are rejected under 35 U.S.C. 102(e) as being anticipated by Roth et al. (6,285,987).

Claim 1: Roth et al. discloses in a networked environment having a plurality of computer systems interconnected for the purpose of instantaneously transmitting and receiving data, a method for auctioning an advertisement opportunity, said method comprising the steps of:

a. providing notification of an advertisement opportunity from a content/opportunity provider computer system, wherein said advertisement opportunity corresponds to an opportunity to transmit an advertisement to a consumer (col 2, lines 20-31; col 4, lines 16-25; col 7, lines 10-25 and Fig 1);

b. receiving an advertisement characterization from an advertiser computer system, wherein said advertisement characterization corresponds to an advertisement (col 4, lines 33-43 and col 7, lines 10-25);

c. calculating a correlation factor between said advertisement characterization and said consumer in a profiler computer system (col 4, lines 33-43; col 6, lines 33-34; col 7, lines 10-25 and col 11, lines 52-63);

d. transmitting said correlation factor to said advertiser computer system (col 7, lines 10-25; col 11, lines 33-38; col 11, lines 52-63 and col 12, lines 14-38);

e. receiving a successful bid for said advertisement opportunity at said content/opportunity provider computer system, wherein said successful bid results in the transmission of said advertisement to said consumer in said advertisement opportunity (col 2, lines 58-60; col 4, lines 33-43; col 7, lines 33-38 and col 12, lines 14-38).

Claim 5: Roth et al. discloses in a networked environment having a plurality of computer systems interconnected for the purpose of instantaneously transmitting and

receiving data, a method for auctioning an advertisement opportunity, said method comprising the steps of:

a. providing notification of an advertisement opportunity from a content/opportunity provider computer system to a plurality of computer systems representing advertisers, wherein said advertisement opportunity corresponds to an opportunity to transmit an advertisement to a consumer (col 4, lines 33-43 and Fig 7);

b. receiving a plurality of advertisement characterizations from said plurality of computer systems representing advertisers, wherein each of said advertisement characterizations corresponds to an advertisement (col 6, lines 12-19 and col 7, lines 11-25);

c. calculating a plurality of correlation factors between said advertisement characterizations and said consumer in a profiler computer system (col 6, lines 33-34 and col 11, lines 52-63);

d. transmitting said correlation factors to said plurality of computer systems representing advertisers (col 11, lines 33-38 and col 12, lines 14-38);

e. receiving a plurality of bids for said advertisement opportunity at said content/opportunity provider computer system (col 11, lines 33-38 and col 12, lines 14-38);

f. selecting a successful bid from said plurality of bids for said advertisement opportunity wherein said successful bid results in the transmission of said advertisement to said consumer in said advertisement opportunity (col 2, lines 58-60; col 4, lines 33-43; col 7, lines 10-25 and col 12, lines 14-38).

Claim 9: Roth et al. discloses the method described in claim 5 wherein the selecting of said successful bid in step (f) is based on the highest bid of said plurality of bids (col 7, lines 19-24).

Claim 10: Roth et al. discloses a data processing system for auctioning an advertisement opportunity, said data processing system comprising:

a. computer processing means for processing data (col 4, lines 33-43 and Figs 1 and 7);

b. first means for transmitting an advertisement opportunity announcement wherein said advertisement opportunity announcement corresponds to an advertisement opportunity (col 6, lines 12-19; col 7, lines 11-25 and col 12, lines 14-29);

c. second means for receiving an advertisement characterization wherein said advertisement characterization corresponds to an advertisement (col 6, lines 33-34 and col 12, lines 14-29);

d. third means for correlating said advertisement characterization with a consumer profile to produce a correlation result (col 11, lines 33-38 and col 12, lines 14-29);

e. fourth means for transmitting said correlation result (col 12, lines 14-29);

f. fifth means for receiving a bid for said advertisement opportunity (col 2, lines 58-60; col 4, lines 33-43 and col 12, lines 14-29)).

Claim 11: Roth et al. discloses the data processing system described in claim 10 further comprising:

g. sixth means for determining if said bid is acceptable (col 11, lines 52-63).

Claim 14: Roth et al. discloses a computer program embodied on a computer-readable medium for auctioning an advertisement opportunity, said program comprising:

a. an advertisement source code segment for receiving an advertisement characterization (col 4, lines 33-43);

b. a consumer characterization code segment for receiving a unique consumer ID and retrieving a consumer characterization corresponding to said unique consumer ID (col 3, lines 38-40, col 4, lines 33-43 and Fig 1, element 16B);

c. a correlating source code segment for calculating a correlation factor between said advertisement characterization and said consumer characterization (col 11, lines 33-38 and 52-63);

d. a transmitting source code segment for transmitting said correlation factor (col 12, lines 33-38);

e. a bid receiving source code segment for receiving a bid for said opportunity (col 2, lines 58-60 and col 4, lines 33-43); and

f. a selecting source code segment for selecting a successful bid which results in transmission of said advertisement to said consumer (col 2, lines 58-60; col 4, lines 33-43; col 7, lines 10-25 and col 12, lines 14-38).

Claim 17: Roth et al. discloses a method of characterizing subscribers for subsequent targeting of advertisements, the method comprising the steps of:

a. recording a series of subscriber viewing selections (col 11, lines 47-51; col 18, lines 44-65 and Fig 1, element 16B);

b. creating a subscriber characterization based on the viewing selections and a set of heuristic rules (col 11, lines 47-51 and col 18, lines 44-65);

c. storing the subscriber characterization (col 11, lines 47-51 and col 18, lines 44-65);

d. allowing access to the subscriber characterization to determine the applicability of an advertisement in conjunction with the sale of an advertisement opportunity (col 11, lines 47-51 and col 18, lines 44-65).

Claim 18: Roth et al. discloses a method for auctioning advertising opportunities, the method comprising:

a. constructing a profile of a subscriber based on activities of the subscriber (col 3, lines 38-40; col 4, lines 44-49 and Fig 1, element 16B);

b. recognizing an advertisement opportunity in a medium (col 4, lines 16-42 and col 7, lines 11-25);

c. providing notification of the advertisement opportunity to advertisers (col 4, lines 16-42 and col 7, lines 11-25);

d. receiving advertisement characterizations from the advertisers, wherein the advertisement characterizations characterize an associated advertisement (col 4, lines 16-42 and col 7, lines 11-25);

e. determining a correlation between the advertisement characterizations and the subscriber profile (col 11,lines 33-36 and 52-63);

f. providing the correlation to the advertisers (col 4, lines 16-42 and col 7, lines 11-25);

g. receiving bids for the advertisement opportunity from the advertisers (col 4, lines 16-42 and col 7, lines 11-25); and

h. selecting the winning bid (col 4, lines 16-42 and col 7, lines 11-25).

Claim 19: Roth et al. discloses the method of claim 18, wherein said receiving bids and said selecting the winning bid are conducted over the Internet (col 4, lines 58-63 and col 18, lines 28-35).

Claim 23: Roth et al. discloses the method of claim 18, wherein the activities of the subscriber include point-of-purchase transactions (col 8, lines 65-67).

Claim 25: Roth et al. discloses the method of claim 18, wherein the activities of the subscriber include Internet viewing transactions (col 4, lines 58-63 and col 18, lines 28-35).

Claim 27: Roth et al. discloses the method of claim 18, wherein said constructing a profile of a subscriber includes characterizing the subscriber based on publicly available data (col 11, 47-51 and col 18, 44-65).

Claim 28: Roth et al. discloses the method of claim 18, wherein said constructing a profile of a subscriber includes characterizing the subscriber based on private data (col 3, lines 38-40 and col 18, lines 44-65).

Claim 29: Roth et al. discloses the method of claim 18, wherein the advertisement characterizations characterize the advertisement based on one or more predetermined parameters (col 18, lines 36-65).

Claim 30: Roth et al. discloses the method of claim 18, wherein the subscriber profile includes a demographic characterization of the subscriber, and the ad characterization includes a demographic characterization of a target market for the advertisement (col 8, lines 8-16 and col 18, lines 44-65).

Claim 32: Roth et al. discloses the method of claim 18, wherein said recognizing an 30 opportunity is performed by the subscriber and said providing the correlation includes providing the correlation and a target price for the advertisement opportunity, the target price being inversely proportional to the correlation (col 4, lines 16-25; col 13, lines 47-58 and col 17, lines 59-67).

Claim 33: Roth et al. discloses the method of claim 18, wherein said recognizing an opportunity is performed by a content/opportunity provider and said providing the correlation includes providing the correlation and a target price for the advertisement opportunity, the target price being directly proportional to the correlation (col 13, lines 47-58 and col 17, lines 59-67).

Claim 34: Roth et al. discloses the method of claim 32, wherein the target price is a minimum acceptable price (col 8, lines 32-40).

Claim 38: Roth et al. discloses a system for auctioning an advertisement opportunity, the system comprising:

a. means for determining a subscriber profile based on subscriber activities (col 3, lines 38-40; col 4, lines 44-49 and Fig 1, element 16);

b. means for announcing an advertisement opportunity, wherein each advertisement opportunity corresponds to an opportunity to place an advertisement in a program (col 4, lines 16-42 and col 7, lines 11-25);

c. means for receiving advertisement characterizations from one or more advertisers, wherein each advertisement characterization corresponds to an advertisement (col 4, lines 16-42 and col 7, lines 11-25);

d. means for correlating the advertisement characterizations with the subscriber profile to produce a correlation result (col 11,lines 33-36 and 52-63);

e. means for transmitting the correlation result to the one or more advertisers (col 4, lines 16-42 and col 7, lines 11-25);

f. means for receiving a bid for the advertisement opportunity from the advertisers (col 4, lines 16-42 and col 7, lines 11-25); and

g. means for determining if the bid is acceptable (col 4, lines 16-42; col 7, lines 11-25 and col 8, lines 32-40).

Claim 41; Roth et al discloses the system of claim 38, further comprising means for setting a target price for the advertisement opportunity, wherein said means for announcing an advertisement opportunity is controlled by the subscriber and said means for transmitting the correlation result also transmits the target price, the target price

being inversely proportional to the correlation results (col 4, lines 16-25; col 13, lines 47-58 and col 17, lines 59-67).

Claim 42: Roth et al. discloses the system of claim 38, further comprising means for setting a target price for the advertisement opportunity, wherein said means for announcing an advertisement opportunity is controlled by a content/opportunity provider and said means for transmitting the correlation result also transmits the target price, the price to transmit an advertisement to a subscriber is directly proportional to the correlation results (col 13, lines 47-58 and col 17, lines 59-67).

Claim 43 describe the computer program of claim 18; therefore, the prior art of Roth et al. as set forth above in claim 18 is relied upon to reject claims 43 (*cf.* claim 2 above).

Claim 46. Roth et al. discloses a method for auctioning a right to transmit an advertisement to a consumer, in an advertising opportunity, based on a correlation between a consumer profile and advertisement profiles, the method comprising:

a. receiving transaction data for the consumer (col 2, lines 20-31; col 4, lines 16-25 and col 7, lines 10-25;

b. constructing the consumer profile based on the transaction data, wherein the consumer profile characterizes the consumer (col 3, lines 38-40; col 4, lines 44-49 and Fig 1, element 16B);

c. receiving the advertisement profiles from advertisers, wherein the advertisement profiles characterize associated advertisements (col 4, lines 16-42 and col 7, lines 11-25);

d. correlating the advertisement profiles and the consumer profile (col 11,lines 33-36 and 52-63);

e. providing the results of said correlating to the advertisers (col 4, lines 16-42 and col 7, lines 11-25);

f. receiving bids for the advertisement opportunity from the advertisers based on the provided results (col 4, lines 16-42 and col 7, lines 11-25);

g. determining the winning bid (col 4, lines 16-42 and col 7, lines 11-25);

h. transmitting notification of the winning bid to the advertiser (col 4, lines 16-42 and col 7, lines 11-25); and

i. permitting the advertisement to be transmitted to the consumer in the advertisement opportunity (col 4, lines 16-42 and col 7, lines 11-25).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 2-4, 6-8, 12, 13, 15, 16, 26, 31 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth et al. in view of Kramer (6,327, 574).

Claim 2: Roth et al. discloses the method described in claim 1 but does not explicitly teach that said advertisement characterization is in the form of an ad characterization vector, said consumer is represented by a consumer characterization vector, and said correlation factor in step (c) is calculated as the scalar product between said ad characterization vector and said consumer characterization vector. In an analogous art, Kramer discloses a similar method for correlating an ad characterization vector and a consumer characterization vector (col 10, lines 47-67 and col 11, lines 1-10). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the correlation method in Roth et al. One would have been motivated to use the scalar product of the advertisement and consumer vectors to provide a more rigorous mathematical foundation to the correlation factor used in Roth et al.; thus, allowing a more efficient matching of the advertisement and the consumer in the bidding process.

Claim 3: Roth et al. discloses the method described in claim 2 containing a demographic characterization of said consumer and a demographic characterization of the target market for said advertisement but does not explicitly teach that said ad and consumer characterizations are in the forms of vectors. In an analogous art, Kramer et al. teaches the use of vectors to characterize ads and consumers (col 10, lines 47-67 and col 11, lines 1-10). Furthermore, Kramer et al. also teaches the use of demographics information in characterizing the vectors (col 11, lines 38-53; col 21, lines 7-19 and Figs 10, 11A and 11B). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the characterization of the advertisement and the consumer by using vectors and demographic information.

One would have been motivated to enhance the relevancy of the correlation by providing additional practical information.

Claim 4: Roth et al. discloses a correlation method between a consumer characterization and a ad characterization but does not explicitly disclose the method described in claim 2 wherein said consumer characterization vector contains a product preference characterization of said consumer and wherein said ad characterization vector contains a product preference target market for said advertisement. In an analogous art, Kramer et al. teaches the use of vectors to characterize consumers and advertisements wherein said consumer characterization vector contains a product preference characterization of said consumer and wherein said ad characterization vector contains a product preference target market for said advertisement (col 10, lines 34-38; col 11, lines 22-36; col 28, lines 45-55 and Fig 10, element 1036). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the characterization of the advertisement and the consumer by using vectors and product preference information. One would have been motivated to enhance the relevancy of the correlation by providing additional practical information for the consumer and advertisement vectors.

Claim 6: Roth et al. discloses the method described in claim 5 but does not explicitly teach that said advertisement characterization is in the form of an ad characterization vector, said consumer is represented by a consumer characterization vector, and said correlation factor in step (c) is calculated as the scalar product between said ad characterization vector and said consumer characterization vector. In an

analogous art, Kramer discloses a similar method for correlating an ad characterization vector and a consumer characterization vector (col 10, lines 47-67 and col 11, lines 1-10). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the correlation method in Roth et al. One would have been motivated to use the scalar product of the advertisement and consumer vectors to provide a more rigorous mathematical foundation to the correlation factor used in Roth et al.; thus, allowing a more efficient matching of the advertisement and the consumer in the bidding process.

Claim 7: Roth et al. discloses the method described in claim 6 containing a demographic characterization of said consumer and a demographic characterization of the target market for said advertisement but does not explicitly teach that said ad and consumer characterizations are in the forms of vectors. In an analogous art, Kramer et al. teaches the use of vectors to characterize ads and consumers (col 10, lines 47-67 and col 11, lines 1-10). Furthermore, Kramer et al. also teaches the use of demographics information in characterizing the vectors (col 11, lines 38-53; col 21, lines 7-19 and Figs 10, 11A and 11B). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the characterization of the advertisement and the consumer by using vectors and demographic information. One would have been motivated to enhance the relevancy of the correlation by providing additional practical information.

Claim 8: Roth et al. discloses a correlation method between a consumer characterization and an ad characterization but does not explicitly disclose the method

described in claim 2 wherein said consumer characterization vector contains a product preference characterization of said consumer and wherein said ad characterization vector contains a product preference target market for said advertisement. In an analogous art, Kramer et al. teaches the use of vectors to characterize consumers and advertisements wherein said consumer characterization vector contains a product preference characterization of said consumer and wherein said ad characterization vector contains a product preference target market for said advertisement (col 10, lines 34-38; col 11, lines 22-36; col 28, lines 45-55 and Fig 10, element 1036). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the characterization of the advertisement and the consumer by using vectors and product preference information. One would have been motivated to enhance the relevancy of the correlation by providing additional practical information for the consumer and advertisement vectors.

Claims 12 and 13 describe the data processing system of claims 2 and 3 respectively; therefore, the prior arts of Roth et al. and Kramer et al. as set forth above in claims 2 and 3 are relied upon to reject claims 12 and 15 (*cf.* claims 2 and 3 above).

Claims 15 and 16 describe the computer program of claims 2 and 3; therefore, the prior arts of Roth et al. and Kramer et al. as set forth above in claims 2 and 3 are relied upon to reject claims 12 and 15 (*cf.* claims 2 and 3above).

Claim 26: Roth et al. discloses the method of profiling subscribers described in claim 18 but does not explicitly teach that said constructing a profile of a subscriber

includes generating one or more subscriber characterization vectors based on one or more predetermined parameters. In an analogous art, Kramer discloses a similar method for constructing a profile of a subscriber that includes characterization vectors based on one or more predetermined parameters (col 10, lines 47-67 and col 11, lines 1-10). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the profiling method of Roth et al. One would have been motivated to use vectors to provide a more rigorous mathematical foundation to the profile of the subscribers used in Roth et al.; thus, allowing for more efficient and accurate organization of the information on the subscribers.

Claim 31: Roth et al. discloses the method of profiling subscribers described in claim 18 but does not explicitly teach that said constructing a profile of a subscriber includes the subscriber profile includes a product preference characterization of the subscriber, and the ad characterization includes a product preference characterization of a target market for the advertisement. In an analogous art, Kramer et al. teaches the inclusion of a product preference characterization in a subscriber profile and a product preference of a target market in an advertisement (col 10, lines 34-38; col 11, lines 22-36; col 28, lines 45-55 and Fig 10, element 1036). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the subscriber profile of Roth et al. One would have been motivated to enhance the relevancy of the profile by providing additional practical information on the subscriber and the advertisement.

Claim 35: Roth et al. discloses the method of profiling subscribers described in claim 18 but does not explicitly teach that the subscriber profile and the advertisement characterization are in the form of vectors. In an analogous art, Kramer discloses a similar method for constructing a profile of a subscriber that includes vectors based (col 10, lines 47-67 and col 11, lines 1-10). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the profiling method of Roth et al. One would have been motivated to use vectors to provide a more rigorous mathematical foundation to the profile of the subscribers used in Roth et al.; thus, allowing for more efficient and accurate organization of the information on the subscribers.

7. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth et al. in view of Fisher et al. (5,835,896).

Claims 20: Roth et al. discloses the bidding method of claim 18 but does not explicitly mention determining a highest bid; transmitting the highest bid to the advertisers; and receiving additional bids from the advertisers, wherein said selecting the winning bid is performed subsequent to determining a highest bid, said transmitting the highest bid, and said receiving additional bids. In an analogous art, Fisher et al. teaches the steps of determining a highest bid; transmitting the highest bid to the advertisers; and receiving additional bids from the advertisers, wherein said selecting the winning bid is performed subsequent to determining a highest bid, said transmitting the highest bid, and said receiving additional bids (col 6, lines 39-87 and col 7, lines 1-7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention

was made to expand on the bidding method of Roth et al. One would have been motivated to allow for additional higher bids from advertisers to maximize profitability.

Claim 21: Fisher et al. further teaches the method of claim 20, wherein said determining a highest bid and said transmitting the highest bid are continually performed until said receiving additional bids does not produce additional bids (col 6, lines 39-87 and col 7, lines 1-7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to expand on the bidding method of Roth et al. One would have been motivated to allow for recurring additional higher bids from advertisers to gain the greatest possible return of the bidding process.

Claim 22: Fisher et al. further discloses the method of claim 20, wherein said receiving bids, said determining a highest bid, said transmitting the highest bid, said receiving additional bids and said selecting the winning bid are conducted over the Internet (col 7, lines 8-10). Since Roth et al. also discloses the use of Internet in the bidding process, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the two methods and use the Internet to enhance the efficiency of the bidding process.

8. Claims 24, 37, 40 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth et al. in view of Hanson et al. (5,974,398).

Claim 24: Roth et al. discloses the auctioning advertising opportunities method of claim 18 but does not explicitly teach that the activities of the subscriber include television viewing transactions. In an analogous art, Hanson et al. teaches the inclusion

of television activities in a method wherein users are reimbursed for watching auctioned advertisement (col 3, lines 5-12; col 9, lines 66-67 and col 10, lines 1-6). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the auctioning advertising opportunities method of Roth et al. One would have been motivated to include television viewing transactions to expand on the possible medium and audience that can be reach by advertisement.

Claim 37: Roth et al. discloses the method of claim 18 but does not explicitly teach that the medium is a program stream. In an analogous art, Hanson et al. teach that the medium can be program stream such as a television program (col 8, lines 35-39; col 9, lines 66-67 and col 10, lines 1-7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to expand on the auctioning advertising opportunities method of Roth et al. It is known in the art that the medium such as a television program typically includes breaks to allow for the presentation of advertisement.

Claim 40: Roth et al. discloses the system of claim 38 wherein means for determining determines the subscriber profile based on the subscriber activities including point-of-purchase transactions (col 8, lines 65-67) and Internet viewing transactions (col 4, lines 58-63) but does not explicitly teach the use of television viewing transactions. In an analogous art, Hanson et al. teaches the inclusion of television activities in a method wherein users are reimbursed for watching auctioned advertisement (col 3, lines 5-12; col 9, lines 66-67 and col 10, lines 1-6). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention

was made to modify the auctioning advertising opportunities system of Roth et al. One would have been motivated to include television viewing transactions to gain additional and relevant information to be included in the profile thus increasing the accuracy of the profile.

Claim 45 describes the computer program of claim 40; therefore, the prior arts of Roth et al. and Hanson et al. as set forth above in claim 40 are relied upon to reject claims 45.

Response to Arguments

9. Applicant's arguments filed February 27th 2006 have been fully considered but they are not persuasive.

A. Regarding Claims 1, 5, 10 and 14, the Applicant argues that the prior art of Roth et al. does not disclose

a. "calculating a correlation factor between said advertisement characterization and said consumer in a profiler computer system" (page 20);

b. "transmitting said correlation factor to said advertiser computer system" (page 20);

c. "receiving a successful bid for said advertisement opportunity at said content/opportunity provider computer system" (page 21)

d. that the receipt of the successful bid "results in the transmission of said advertisement to said consumer in said advertisement opportunity" (page 22).

The Examiner notes that the system of Roth et al. evaluates the relationship with complex criteria between the characterization of the ad and the profile of the consumer; thus there is a correlation being established between the two items (col 14, lines 50-60). Furthermore, the advertisers can submit multiple bids at multiple levels with different parameters being evaluated (col 13, lines 41-64). Roth et al. also teaches the use of a log unit that communicates with the advertisers regarding bids being submitted and whether the bids were successful (col 12, lines 12-40 and col 18, lines 21-27). Therefore, there is a communication channel with the advertiser to update on the level of participation in the bidding process. Regarding parts c and d, Roth et al. teaches that once the bid selection logic has received and selected a successful bid, the advertisement is provided to the consumer (col 4, lines 26-43 and col 6, lines 33-40). The Examiner also notes the instant claims are silent as to the system being implemented in real-time as argued by the Applicant on page 22.

B. Regarding Claim 17, the Applicant argues that Roth et al. does not disclose the use of “a set of heuristic rules” (page 23). The Examiner notes that Roth et al. teaches the implementation of a set of parameters and criteria in the bidding process (col 4, lines 7-26); thus Roth et al. teaches the use of “a set of heuristic rules.”

C. Regarding Claims 18, 38, 43 and 46, the Applicant argues that Claims 18, 38, 43 and 46 recites “features similar to one or more of the features noted above with respect to independent claims 1, 5, 10, and/or 14” (page 23). The Examiner directs the Applicant to the respective responses noted above.

D. Regarding the remaining dependent claims, the Applicant arguments are directed towards the limitations of independent claims 1, 5, 10, 14, 18, 38, 43 and 46. The Examiner directs the Applicant to the respective responses noted above.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri V. Nguyen whose telephone number is (571) 272-6965. The examiner can normally be reached on M-F 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029 and Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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